

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW MEXICO  
3

4 IN RE: SANTA FE NATURAL  
5 TOBACCO COMPANY MARKETING  
6 AND SALES PRACTICES LITIGATION,

7 NO. 16-MD-2695 JB/LF  
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9  
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11

12 Transcript of Motion Proceedings before  
13 The Honorable James O. Browning, United States  
14 District Judge, Albuquerque, Bernalillo County,  
15 New Mexico, commencing on October 26, 2018.

16 For the Plaintiffs: Mr. Scott Schlesinger; Ms. Erika  
17 Anderson; Mr. Nicholas Koluncich

18 For the Plaintiffs (Via telephone): Mr. Jeffrey  
19 Haberman; Mr. Matt Schultz

20 For the Defendants: Mr. Andrew Schultz; Mr. Peter  
21 Biersteker; Mr. David Monde

22 For the Defendants (Via telephone): Ms. Sharyl  
23 Reisman

24 Jennifer Bean, FAPR, RDR, RMR, CCR  
25 United States Court Reporter  
Certified Realtime Reporter  
333 Lomas, Northwest  
Albuquerque, NM 87102  
Phone: (505) 348-2283  
Fax: (505) 843-9492

SANTA FE OFFICE  
119 East Marcy, Suite 110  
Santa Fe, NM 87501  
(505) 989-4949  
FAX (505) 843-9492



MAIN OFFICE  
201 Third NW, Suite 1630  
Albuquerque, NM 87102  
(505) 843-9494  
FAX (505) 843-9492  
1-800-669-9492  
e-mail: info@litsupport.com

1 THE COURT: Good morning everyone. I  
2 appreciate everyone making themselves available to me  
3 this morning.

4 All right. The Court will call In Re:  
5 Santa Fe Natural Tobacco Company Marketing and Sales  
6 Practice and Products Liability Litigation, No. MD  
7 16-2695 JB/LF.

8 If counsel will enter their appearances for  
9 the plaintiffs.

10 MR. SCHLESINGER: Good morning, Judge. May  
11 it please the Court. Scott Schlesinger for the  
12 plaintiffs.

13 THE COURT: Mr. Schlesinger, good morning  
14 to you.

15 MR. KOLUNCICH: Good morning, Your Honor,  
16 counsel. Nicholas Koluncich on behalf of plaintiffs.

17 THE COURT: Mr. Koluncich, good morning to  
18 you.

19 MS. ANDERSON: Erika Anderson, Your Honor,  
20 also on behalf of the plaintiffs.

21 THE COURT: All right. Ms. Anderson, good  
22 morning to you.

23 Is there anybody on the phone from the  
24 plaintiffs' side? Who is on the phone?

25 MR. SCHULTZ: Good morning, Your Honor.

1 Matt Schultz with Levin Papantonio in Pensacola. And  
2 on our end, Your Honor, there is maybe some car noise  
3 or something that's making it difficult to hear  
4 y'all.

5 THE COURT: It's not too bad. Mr. Schultz,  
6 good morning to you. Anyone else on the phone?

7 MR. HABERMAN: Good morning, Your Honor.  
8 Jeffrey Haberman from Scott Schlesinger's office.

9 THE COURT: All right. Mr. Haberman, good  
10 morning to you.

11 Anyone else on the plaintiffs' side that is  
12 on the phone?

13 All right. For the defendants?

14 MR. MONDE: Good morning, Judge. David  
15 Monde on behalf of the defendants.

16 THE COURT: Mr. Monde, good morning to you.

17 MR. MONDE: Good morning.

18 MR. BIERSTEKER: Good morning, Your Honor.  
19 Peter Biersteker.

20 THE COURT: Mr. Biersteker, good morning to  
21 you.

22 MR. SCHULTZ: Your Honor, Andrew Schultz  
23 for the defendants.

24 THE COURT: Mr. Schultz, good morning to  
25 you.

1 All right --

2 MR. MONDE: Judge, we have someone on the  
3 phone as well.

4 THE COURT: Okay. I'm sorry, I should have  
5 asked that. Who do you have? Ms. Reisman?

6 MS. REISMAN: That's correct, Your Honor.  
7 Good morning.

8 THE COURT: All right. Ms. Reisman, good  
9 morning to you. Anyone else for defendants?

10 All right. I apologize about that.

11 All right. I have reviewed all the filings  
12 on your dispute about the scheduling order. It  
13 seemed to me that everybody was in agreement that the  
14 schedule needed to be amended. It was a little  
15 unclear in spots, but I'm assuming that everybody  
16 thinks it needs to be amended.

17 I'm all for trying to cut seven weeks or  
18 two months out of the schedule to try to get this  
19 thing moving along, but I guess I'm not interested in  
20 trying to use this opportunity to restructure what  
21 we've always had, and go to -- instead of a staggered  
22 disclosure, go to a simultaneous disclosure. I'm not  
23 sure that, A, that would be appropriate at this  
24 stage, given that we've always said that we were  
25 going to have staggered, and change it; at this

1 point, I'm not sure it would be fair to the  
2 defendants. And I also think that, generally,  
3 staggered is better to try to get the rebuttal in a  
4 proper posture so the person that has the burden of  
5 proof -- and that being the plaintiffs here -- have a  
6 chance to have rebuttal experts.

7 So I labeled these as Exhibit As and Bs. I  
8 think you did, too. The only thought that possibly  
9 crossed my mind is that at the bottom of what is  
10 Exhibit B, where you have "all expert depositions to  
11 be completed," if there was some way to pick up that  
12 April deadline, of April 26, that all depositions be  
13 completed by that date; take the first four blocks on  
14 Exhibit B, and then everything else on Exhibit A,  
15 start with "all expert depositions to be completed,"  
16 that would then get the time savings. But I don't  
17 know if anybody is interested in that other than me.  
18 So if they're not interested -- it would seem to me  
19 that probably what generally happens is the  
20 plaintiffs disclose their experts, they're deposed;  
21 and then the defendants disclose their experts,  
22 they're deposed; and then the disclosure of rebuttal  
23 witnesses, and if necessary, they're deposed.

24 So I'm not sure I quite understand why we  
25 need 60 days. It's actually more like 70 days before

1 the -- all the expert depositions are completed. But  
2 if that's what y'all want, I'll sign Exhibit B and  
3 make that the order. If not, if there is something  
4 to be done to try to trim some time out, that's a  
5 proposal.

6 All right. I believe it's the plaintiffs'  
7 motion to amend that laid this all out. Then I got a  
8 response. So, Mr. Schlesinger, if you wish to speak  
9 in support of your motion, you may do so at this  
10 time.

11 MR. SCHLESINGER: I do.

12 THE COURT: Mr. Schlesinger.

13 MR. SCHLESINGER: Yes. Thank you, Judge.

14 Good morning. I've heard Your Honor's  
15 inclination. You know, I will say that it wasn't  
16 anything I didn't anticipate. But I will still argue  
17 for a simultaneous disclosure. And I'll keep it  
18 brief. My conceptualization of this is that, like a  
19 medical malpractice case, sometimes the people that  
20 know the facts and the evidence best are the  
21 defendants.

22 And Your Honor may recall that, in excess  
23 of a year ago, during some of the arguments we made  
24 on other issues, I identified the bulk of our  
25 experts. And they know who they are because they've

1     deposed them many times. And the subject matter of  
2     their opinions about American Spirit, and what we  
3     contend are the deceptive nature of the advertising,  
4     suggesting that it's a healthier product is laid out  
5     in extensive sworn testimony.

6             Dr. Proctor was one of our experts. I  
7     alerted the defendants to him long ago. He was  
8     recently deposed before a trial we had -- a couple  
9     trials we had this year that I tried, where American  
10    Spirit figured prominently in the proofs at trial.  
11    And he was deposed extensively on no other subject  
12    than American Spirit extensively. It was a different  
13    firm; it was the King & Spalding firm, Mr. Jeff Furr.  
14    But the entirety of the subject matter was about  
15    American Spirit.

16            So there is just so much evidence in the  
17    record already from our experts about the subject  
18    matter. And there really aren't -- there is no  
19    mysteries. I mean, we have to show the economic  
20    damages, obviously, and we've got an expert on that  
21    who is working diligently. But the rest of our  
22    experts are so close to being ready to go, I'm happy  
23    to give them over anytime, even in advance of the  
24    deadlines in the scheduling order. We're just trying  
25    to move some of it back.

1           Apparently, in December of '17, there were  
2     some materials that were owed to us by defendants,  
3     and some of the documentary paperwork that they were  
4     supposed to get to us, they didn't get to us, and  
5     there has been sort of a side squabble going on about  
6     that, Your Honor may have picked up some information  
7     about, for an extended period of time. And it was  
8     not until deep into the summer that some of the  
9     omissions were corrected, and hundreds of thousands  
10    of additional documents were produced. We're still  
11    digesting them, and that's part of the reason why  
12    we're seeking to push the expert deadlines back a  
13    bit.

14           But we thought that, perhaps because the  
15    delays we argue were occasioned by this late  
16    disclosure of the defendants, that it might be  
17    equitable to reconsider the staggered disclosure, and  
18    try to make it more simultaneous in order to, as Your  
19    Honor said, trim some time off of this. Because the  
20    case is taking an extremely long time.

21           And one of the things that's a major  
22    concern to me -- and I've told Your Honor this many  
23    times -- I know there is an economic component to  
24    this, but there is a public health component as well;  
25    that being that the market share of the American



1 Spirit wholly owned company continues to rise, and  
2 the sales have gone up over 100 percent, even during  
3 the pendency of this litigation. And to the extent  
4 that's a harmful thing for young people and other  
5 addicted smokers to be buying a cigarette they think  
6 is healthier, which I will contend there is no other  
7 explanation in an otherwise down cigarette market for  
8 sales to be rising meteorically, there is no other  
9 reason except for an ongoing health reassurance  
10 misleading of consumers.

11 The labeling and the injunctive relief that  
12 I seek regarding the words "natural, organic and  
13 additive-free," as long as that's on there, these  
14 sales will continue to rise. They're already at  
15 about 3 percent market share. There comes a point,  
16 like in the olden days with light cigarettes and  
17 Marlboro Light, there comes a point where, even after  
18 you take away the descriptor "light," like they did  
19 with Marlboro Light, and make it Marlboro Gold Pack,  
20 they've locked in the market share. They've locked  
21 in the perception that this is a healthier product.  
22 So at some point it won't matter as much for health  
23 purposes if we do get the injunctive relief granted  
24 and remove the descriptors "natural, organic," it  
25 won't matter as much, because time is on their side.

SANTA FE OFFICE  
119 East Marcy, Suite 110  
Santa Fe, NM 87501  
(505) 989-4949  
FAX (505) 843-9492



MAIN OFFICE  
201 Third NW, Suite 1630  
Albuquerque, NM 87102  
(505) 843-9494  
FAX (505) 843-9492  
1-800-669-9492  
e-mail: info@litsupport.com

1           What's interesting is -- and I'll show this  
2           to Your Honor -- you may remember that -- may I  
3           approach?

4           THE COURT:   You may.

5           MR. SCHLESINGER:   I'll just give them to  
6           you.   You may remember that I had explained to the  
7           Court some time ago that Philip Morris owned a  
8           company, Nat Sherman, that made a cigarette called  
9           "Naturals."   And they received the same warning  
10          letter in September of 2015, from the FDA that  
11          Reynolds, owning American Spirit, received:   Hey,  
12          your reference to Naturals is an implied health  
13          descriptor that suggests a modified risk tobacco  
14          product that hasn't gone through the proof of safety,  
15          and therefore, it's an improper descriptor.   Philip  
16          Morris went ahead and complied.   And I showed Your  
17          Honor those old packs -- there may be a few still  
18          laying around, if Your Honor kept them -- where  
19          Philip Morris changed Nat Sherman Naturals to what's  
20          called Nat Sherman Select.   That was how they  
21          immediately complied.

22          What's very interesting is, now, and  
23          concomitant with the rise in sales of the Natural  
24          American Spirit, Nat Sherman has gone and basically  
25          duplicated the American Spirit package to try to

1 obtain some of that market share and sales. And if  
2 you look at those two packs, they've gotten very,  
3 very similar. And that's not the only color pattern  
4 that's similar.

5 What's also interesting is they no longer  
6 use the word "select." They now use a contraction,  
7 the word Nat's, and they're showing N-A-T apostrophe  
8 S, as possessive, but really what they're doing is  
9 they're using a contraction of the word "natural,"  
10 which is ingenious. But it shows that it is an  
11 ongoing and clear present risk of public health that  
12 these companies, who are fierce competitors, are now  
13 aligning in a similar marketing scheme to achieve the  
14 benefit of this conceptualization of "natural" of  
15 what is a lethal product.

16 So I won't go any further than that, except  
17 to say that that is why I think time is of the  
18 essence. And I'm will to do anything, including Your  
19 Honor's suggestion of shortening the time to get all  
20 of the experts done. I'm willing to do anything to  
21 achieve that end.

22 THE COURT: Well, I don't know how the  
23 defendants would feel about this, but if you're ready  
24 to go with your disclosures, you know, we got  
25 completion of discovery, depositions of class reps,

1 all that done by the end of the month, but then there  
2 is a gap of 40 days before you disclose your experts.  
3 That's a great bulk of the time that we would save  
4 from going with the Exhibit B, or the alternative  
5 one, that the last date for that being the week of  
6 December 9 or 16, I think, and the Exhibit A, it's  
7 the October. So we're playing with two months, is  
8 what we're trying to trim down. Is there a way that  
9 that December 10th date could be cut down some?

10 MR. SCHLESINGER: I think it could be, at  
11 least as to some of our experts. I mean, I've got to  
12 believe -- I think that one of the drags, the sea  
13 anchor in our expert disclosure was our pricing  
14 expert, the fellow talking about what are the  
15 economic damages with regard to the premium that  
16 folks are paying for these cigarettes? And I think  
17 that was our sea anchor that was dragging us. But a  
18 lot of these liability experts that will talk about  
19 fraudulent health reinsurance: Dr. Proshaska, Dr.  
20 Proctor -- I mean, chances are they could give their  
21 depositions tomorrow. Perhaps a long lengthy written  
22 report is still in the drafting stage, but these  
23 folks are certainly very close to being ready to go.  
24 And they can be put out, you know, put up pretty  
25 soon.

1 THE COURT: What did you think about my  
2 suggestion -- I mean, if you could do your  
3 disclosures of some of your experts before December  
4 10th? Did you understand what I was suggesting is  
5 that we on Exhibit B we leave the first four blocks  
6 the way they are, but then starting with "all expert  
7 depositions be completed," then start going with  
8 Exhibit A, so that they would be completed by April  
9 26, and then use the rest of Exhibit A. What would  
10 you think about that?

11 MR. SCHLESINGER: I'm happy to do that,  
12 Judge. I did follow what you're saying, and the idea  
13 of getting all the experts done under the plaintiffs'  
14 proposal by April 26, even if the disclosures are  
15 pushed back, I think we could do that. I think we  
16 could do that. Most of these depositions I've got to  
17 believe are done during a day-long deposition.

18 THE COURT: Well, that's what I was  
19 thinking, is that probably as soon as you disclose  
20 your experts, they're going to want to depose them  
21 then; not wait till everything is disclosed. I would  
22 think that's the way they'd want to do it.

23 MR. SCHLESINGER: And what I'll try to do,  
24 Your Honor, is I'll try to disclose not only the  
25 report, because I think the key to the disclosure is

1 the report, because they already know that I'm using  
2 Dr. Proshaska and Dr. Cummings and Dr. Proctor. So  
3 the key to it is the report. But I'm happy to  
4 disclose when we disclose the report a couple of  
5 alternative dates of deposition when these witnesses  
6 can be available as well. Because, like I said, I'm  
7 happy to do anything I can do to accelerate or  
8 advance this.

9 I remember when we first started and we  
10 laid out the schedule, we were hoping we would know  
11 one way or another whether we could get to a class  
12 certification process sometime in the year 2018. And  
13 now it looks like we're going to take up most of the  
14 year 2019 to do it. So if that's what we're looking  
15 at, I'm looking to shave time anywhere we can, Judge.

16 THE COURT: All right. Anything else  
17 before we hear from the defendants?

18 MR. SCHLESINGER: No.

19 THE COURT: All right. Thank you, Mr. --

20 MR. SCHULTZ: Can I make a suggestion  
21 before the plaintiffs are done? This is Matt Schultz  
22 on the phone.

23 THE COURT: Yes, Mr. Schultz.

24 MR. SCHULTZ: And I've not spoken about  
25 this with Scott. One area you touched on was the

1 length of time needed for depositions after the  
2 defense disclosures. I think, having taken a lot of  
3 these deposition -- and I suspect I'll be involved in  
4 the expert depos -- I don't think there is any  
5 question we can shave some time off of that. One  
6 other thing that occurred to me is we may have very  
7 few or no rebuttal experts. And we've worked very  
8 well together, I think. And my notion is, if we were  
9 to say, after getting the expert reports, Look guys,  
10 we don't have any rebuttal experts, can we bump  
11 everything back that 30 days, because that 30 days is  
12 just sitting there that nobody needs for anything.  
13 So just a thought that if we don't have rebuttal,  
14 there is 30 days saved right there.

15 THE COURT: Okay. All right. Well, there  
16 is a couple of things to play with. Anything else,  
17 Mr. Schlesinger, before I hear from the defendants?

18 MR. SCHLESINGER: No, Your Honor.

19 THE COURT: All right. Thank you,  
20 Mr. Schlesinger.

21 Mr. Monde, is there anything you can work  
22 with there?

23 MR. MONDE: To Mr. Schlesinger's point that  
24 he's ready to do anything to move things ahead, I  
25 would suggest that, again focusing on schedule B for

1 a moment, we move up the disclosure deadline for the  
2 plaintiffs to November 10th. That's going to save 30  
3 days across the board right there.

4 THE COURT: Educate me a little bit. It  
5 sounded like he had one expert he might have some  
6 problems moving up. He might be ready on everything  
7 but a marketing expert.

8 MR. MONDE: Well, I was a bit confused,  
9 too, because I heard some different messages there.  
10 On the one hand, I heard he was mostly ready, and  
11 then perhaps there was this marketing expert, that he  
12 wasn't. And so clearly we want to get the reports  
13 before any depositions are taken. But, you know,  
14 whatever date Mr. Schlesinger is able to produce his  
15 reports before December 10th is saving us time, and I  
16 suggest that we do that. And let Mr. Schlesinger  
17 have time to confer with his co-counsel and decide  
18 now on a date that he can make his disclosures of all  
19 his experts. And we'll move all the dates up  
20 accordingly.

21 And then, secondly, I agree with Mr. Matt  
22 Schultz completely. We, except for this issue about  
23 potentially changing from staggered to simultaneous,  
24 the parties have worked well together, and I agree  
25 with Matt Schultz completely. If it turns out that



1 the plaintiffs do not intend to call rebuttal  
2 experts, then we can move up all the corresponding  
3 dates accordingly, and thereby save really all of the  
4 time that the plaintiffs were seeking to gain back  
5 here.

6 THE COURT: How do we mechanically do that?  
7 Would what we do today is just simply enter a short  
8 order that just has four dates on it, and then, if on  
9 April 11 -- or I guess really on March 11, looking at  
10 the schedule B, on March 11, if the plaintiffs decide  
11 they don't need rebuttal then you come back in --

12 MR. MONDE: Exactly.

13 THE COURT: -- and schedule the rest? Or  
14 do I go ahead and enter an order scheduling this, and  
15 then y'all come back in and amend the order? What,  
16 mechanically, do you propose?

17 MR. MONDE: I think the first suggestion is  
18 the one that makes more sense.

19 THE COURT: Just do a short order?

20 MR. MONDE: Short order; set a status  
21 conference for the date on which the plaintiffs would  
22 need to make their decision about rebuttal experts.  
23 And I would imagine that that's something that we  
24 could then just deal even in a telephonic conference  
25 in terms of setting the rest of the schedule. So we

1 really join in that.

2 But the driver of all that, of course, is  
3 getting a commitment from the plaintiffs on a date  
4 that they can disclose all of their expert reports.  
5 So my suggestion is to give --

6 THE COURT: How would you feel if I asked  
7 Mr. Schlesinger -- let's say he said: I can get  
8 everyone disclosed by November 10th, except this  
9 marketing expert, and I need more time on that, does  
10 that help you to have early disclosure on the bulk of  
11 the experts, and then have one out there that comes  
12 in a little later?

13 MR. MONDE: At the margins, yes;  
14 materially, no. And the reason being that we really  
15 need to know the full scope of their claims before we  
16 go ahead and finalize a strategy for response,  
17 including taking depositions.

18 And, as Your Honor knows from experience,  
19 while experts believe they have their own very tight,  
20 narrow swim lanes to swim in, there is overlap. And  
21 so I believe that the more efficient and the better  
22 thing to do, that still accomplishes the goals of  
23 everyone here, is to have them commit to a date  
24 certain when they can disclose all of their experts.  
25 And then we structure the next four blocks, as Your

1 Honor said, accordingly.

2 THE COURT: All right. What else?

3 MR. MONDE: If I may, just briefly, when we  
4 were last together with the Court telephonically in  
5 June, we had written a letter to the Court explaining  
6 that because of the predictive coding mistakes that  
7 had been made, that we needed to make a supplemental  
8 production of documents. And that we had done that  
9 by June 11.

10 Mr. Matt Schultz had raised the prospect of  
11 a motion to compel. Your Honor asked him: Well, you  
12 know, they've owned up to their mistake, they've  
13 committed to fix it, what is it that you would have  
14 the Court do? And Mr. Schultz suggested that he  
15 needed a 30(b)(6) deposition to really be able to  
16 answer that question.

17 That deposition has taken place. All of  
18 the documents have been produced. And, Judge, that  
19 was five months ago that they got those. We  
20 committed at that telephonic hearing to pay the  
21 expenses for the plaintiffs' lawyer taking the  
22 30(b)(6) deposition; we paid those, without being  
23 asked, after the deposition.

24 So we have honored our commitments that we  
25 made at that telephonic conference. And that issue

1 is long past us.

2 Furthermore, in that conference, I held  
3 open the possibility that the plaintiffs might need  
4 to reopen depositions because of the additional  
5 materials produced, or they might need to take  
6 additional fact witness depositions. They did  
7 neither. Not a single additional fact witness has  
8 been deposed because of that supplemental production,  
9 nor has a single deposition been reopened.

10 But when Mr. Schlesinger talks about  
11 concern about the delay, there are some issues that  
12 we're concerned about that do need to be resolved  
13 very soon before fact discovery closes. And these  
14 are issues that I've been discussing with Mr. Matt  
15 Schultz and Jeff Haberman for some time.

16 Specifically, the plaintiffs elected to  
17 substitute in a new named plaintiff, a gentleman by  
18 the name of Clive Pontusson. And they filed their  
19 action in another district court. They went to the  
20 MDL panel to get a transfer. The MDL panel  
21 transferred Mr. Pontusson. They issued a conditional  
22 transfer order. But that order is not effective  
23 until it's docketed in this court, and it hasn't been  
24 docketed yet.

25 In addition, the plaintiffs need to amend

1 their complaint to add Mr. Pontusson. And then the  
2 parties need to come to an agreement, which we can  
3 readily do, to obviate the need to rebrief the motion  
4 to dismiss, while preserving our rights on the  
5 Court's prior ruling on that. And then we need to  
6 do, really, a short form answer, I would suggest,  
7 that deals with Mr. Pontusson's allegations.

8 The point being that, when they chose to  
9 add this person after fact discovery had closed under  
10 the current order, we promptly deposed him. We  
11 deposed him within a couple of weeks. But there are  
12 important procedural steps that still need to take  
13 place before fact discovery can close here.

14 The other item -- I said there were two --  
15 the second item is that one of their clients, a named  
16 plaintiff, a gentleman by the name of Albert Lopez,  
17 has been unavailable for deposition. We noticed him  
18 in May. Plaintiffs needed to cancel him at the last  
19 moment in June. And we have not been able to depose  
20 him since. We've not brought it to the Court's  
21 attention because I had an agreement with the  
22 plaintiffs that they would either make Mr. Lopez  
23 available by September 30, or they would dismiss him.  
24 We're fine either way. But they still have not done  
25 either of those. And so, if they want to proceed

1 with Mr. Lopez, that's fine with us, but we need a  
2 chance to depose him. And, obviously, he needs to be  
3 deposed before fact discovery closes.

4 So we've got those issues. They are things  
5 that can be readily addressed. You've got counsel  
6 that are cooperating. This need not be a monkey  
7 wrench in the plan that we appear to be working out  
8 with the Court. But they're items, nonetheless, that  
9 need to be addressed.

10 And to the extent that Mr. Schlesinger has  
11 concerns about the pace of things, we certainly don't  
12 need to get into the weeds of that at all today. But  
13 suffice to say that both parties have agreed to all  
14 the prior extensions because both needed them.

15 THE COURT: All right. Thank you,  
16 Mr. Monde.

17 Mr. Schlesinger, I think you're in the  
18 driver's seat on this. Do you want to try to -- I  
19 don't see anybody pushing back on the October 31 date  
20 that y'all had to complete discovery. But what about  
21 the December 10th? Anything you want to do with  
22 that?

23 MR. SCHLESINGER: Well, I'll tell you,  
24 gaging my brain trust, you know, they wanted December  
25 10th, but I think it was primarily because we've got

1 an economist expert and a marketing or advertising  
2 expert that we're still working with. But those four  
3 names that I've got, you know, if I can disclose them  
4 November 10th with reports, I will, Judge, you know,  
5 and I don't see -- I think we can probably do that.  
6 They know these folks; they know Pierson, they know  
7 Proshaska, they know Proctor, they know Cummings.

8 THE COURT: You say December 10th, but  
9 that's what you have down here.

10 MR. SCHLESINGER: Right.

11 THE COURT: Do you just want to keep that?

12 MR. SCHLESINGER: I guess so. But I will  
13 tell Your Honor that I will try to disclose, with  
14 reports, at least those five experts I've named by  
15 November 10th. And I'll exhort them myself to wrap  
16 up the reports so that I can disclose them. Because  
17 under Rule 26, when I disclose them, I have to  
18 disclose them with the reports. But I've already  
19 told everybody who they are. And it gives defense  
20 time to look through other testimony.

21 THE COURT: But you think you'll need till  
22 December 10th to get that fourth expert?

23 MR. SCHLESINGER: For the two folks, the  
24 economist and the advertising/marketing expert, yes,  
25 I need till December 10th.

1 THE COURT: So I guess, then, if we're  
2 going to stick with the December 10th date, the  
3 proposal then, I guess, on the table, would be for me  
4 to just not enter anything after the March 11 date.  
5 So let the defendants disclose. And then you take a  
6 look at it. I can set a date at y'all's convenience,  
7 after March 11, for us to have a status conference.  
8 Y'all don't have to come; you can get on the phone,  
9 whatever is convenient for you. But we not enter  
10 anything else. You take a look at their reports, and  
11 decide whether you want to have rebuttal experts. If  
12 you think you don't, then we can set a sooner date  
13 for the rest of the deadlines at that point. What  
14 would you think about that?

15 MR. SCHLESINGER: I think that's a great  
16 idea, Judge. I know that Matt was hoping we wouldn't  
17 need a rebuttal expert. And I'm hoping he's right  
18 about that. But it does occur to me that the experts  
19 that we did identify who will give the report may,  
20 upon hearing an opinion from the defendants, they may  
21 want to supplement. So even though it might not be a  
22 rebuttal expert, it might be in the nature of a  
23 rebuttal opinion. But it might be from the same  
24 expert.

25 So I can envision Dr. Proctor, for



1 instance, reading a defendant's reports, and saying:  
2 Wait a second, let me reflect on that and retort. So  
3 that's -- you know, and that wouldn't necessarily be  
4 a new person, it might be a new opinion.

5 THE COURT: Why don't I do this: Why don't  
6 I enter an order that sets three dates, October 31st,  
7 December 10th, March 11th. And then -- Mr. Gonzales,  
8 can you look at what we have after March 11th and  
9 see --

10 THE CLERK: Yes, Your Honor.

11 THE COURT: Mr. Schlesinger, after you get  
12 the disclosure of the defendants', do you want to  
13 tell me about how long want to think about the  
14 rebuttal experts, and then I'll --

15 MR. SCHLESINGER: I would say, Judge, when  
16 we get the disclosure with reports, within a week or  
17 10 days we could advise them.

18 I will also say, Your Honor, if you want to  
19 allow that to stay in place, and commit to the April  
20 26 deadline to depose all experts, I think we could  
21 do that as well. And I hope that when we're deposing  
22 experts, we don't have to also stagger the expert  
23 depositions. Once they've identified their opinions  
24 on paper, I would hope that we can just agree to  
25 schedule depositions as we get them done, and knock

1     them out over a month or six weeks, and have ten  
2     expert depositions taken without any preference of  
3     who goes first; just get them done. Because I don't  
4     know that they have to hear Dr. Proctor testify live  
5     before I get to hear who they're putting up as an  
6     expert. And my experience with them is their experts  
7     are often in-house corporate representatives,  
8     although I would hope that they'd have somebody  
9     academic as well.

10           THE COURT: Do you want to do what we have  
11     an agreement on, and that's just set three dates, and  
12     then set a hearing? Or do you want to do what Mr.  
13     Schlesinger is saying, and take those three dates and  
14     then pull that April 26, and then run it on out, just  
15     keep the schedule that you have in Exhibit A, but use  
16     the April 26 date as all depositions will be  
17     completed by that date?

18           MR. MONDE: The former.

19           THE COURT: The former.

20           MR. MONDE: To do the first three dates;  
21     set a conference at the Court's convenience, not less  
22     than 10 days after our disclosures on March 11. And  
23     then we can know if there is even an issue regarding  
24     rebuttal experts, and if so, the scope of it.

25           A concern that I've got about setting the

1 April 26 deadline now is that that would give us just  
2 two weeks after their April 11th disclosure of  
3 rebuttals to, first of all, just understand what  
4 they're saying, and then take depositions. So that's  
5 why I suggest the Court's first suggestion is the way  
6 to go here.

7 My only other point is, again, a close of  
8 fact discovery on October 31st is just fine with us.  
9 But I would like the Court to make clear in its order  
10 that by that date Mr. Lopez either has to have been  
11 made available for deposition, or he needs to be  
12 dismissed, and that the parties are to submit to the  
13 Court, let's say within two weeks, a proposed order  
14 about how to deal with the addition of Mr. Pontusson  
15 from a procedural standpoint.

16 THE COURT: All right. Let's take them one  
17 at a time here. Let me look at -- what do we have,  
18 Mr. Gonzales, say, about March 22nd? What do we have  
19 in that timeframe?

20 THE CLERK: It looks clear.

21 THE COURT: What if I just enter the first  
22 three days: October 31st, December 10th, March 11th,  
23 and then we set a status conference for March 22nd,  
24 say at 8:30, would that work for everybody?

25 MR. MONDE: Yes, Your Honor.

1 THE COURT: All right. Does that work for  
2 you, Mr. Schlesinger?

3 MR. SCHLESINGER: Yes, Judge.

4 THE COURT: And then I think we'll be in a  
5 little better position, rather than forcing you to  
6 try to guess whether you're going to have rebuttal  
7 and what the time length is going to be to depose  
8 those people. I think we'll have a better timeframe.  
9 And I'll make myself available.

10 If y'all get to that point, and you say,  
11 here, we can now agree on the dates, you can submit  
12 me an order. If you can't, then we'll have March  
13 22nd. So I'm going to write here at the bottom,  
14 status conference set for 8:30 a.m. on Friday, March  
15 22, 2019. All right.

16 Now, let's take Mr. Lopez first. Can you  
17 make a commitment to -- I guess the commitment is  
18 that he be deposed by the end of the month.

19 MR. MONDE: Judge --

20 MR. SCHLESINGER: I can tell you about  
21 Mr. Lopez.

22 THE COURT: Let me first find out what you  
23 need from Mr. Monde, and then I'll hear whatever you  
24 say.

25 MR. MONDE: I just need a date certain by

1 which he be made available. There is no rhyme or  
2 reason or magic to October 31st. And, frankly,  
3 people's schedules may not allow for that. What we  
4 want to avoid at all costs is find ourselves in the  
5 middle of expert discovery and reports, and there is  
6 still an open issue regarding Mr. Lopez.

7 So as long as I have a commitment of  
8 counsel that, say for example, he'll be available by  
9 November 15, and either deposed by then or dismissed,  
10 that's certainly fine with us.

11 THE COURT: Could you give that commitment?

12 MR. SCHLESINGER: I'll tell you why I can't  
13 right now, Judge. Mr. Lopez is a fellow that we've  
14 tried to communicate with. And we've had an  
15 inability to contact him. And that's the only reason  
16 why we haven't put him up, is we just can't run him  
17 down. What we discussed with Mr. Monde was that we  
18 would either find him -- he's an Illinois  
19 plaintiff -- we're either going to find him and get  
20 responsiveness from him. The only rumor we got was  
21 from a cousin that he had been hospitalized. But we  
22 just don't have any details.

23 And Mr. Monde had tried to work out the  
24 possibility that we would substitute Mr. Lopez with  
25 another Illinois plaintiff. And one of our

1 plaintiffs, Joshua Horn, would probably qualify as an  
2 Illinois plaintiff, because he's purchased and smoked  
3 American Spirit cigarettes in Illinois. So we may be  
4 able to have him be our Illinois plaintiff without  
5 even substituting.

6 But the larger point that I do want to  
7 emphasize to the Court is that I don't think that  
8 expert discovery is something that has to take place  
9 in absolute terms, only after any and all fact  
10 discovery is done. That's always -- to me, that's  
11 putting the cart before the horse and making  
12 scheduling more important than the realities of  
13 litigation.

14 THE COURT: Well, I don't think Mr. Monde  
15 is insisting on that. He's shaking his head.

16 MR. SCHLESINGER: Right.

17 THE COURT: But I do think that he's  
18 entitled to probably a drop-dead date that, if the  
19 deposition doesn't occur before a certain date, we're  
20 either going to abandon Lopez, he's out of the case,  
21 something like that. So if it's not November 15,  
22 what would you propose?

23 MR. SCHLESINGER: November 15 is fine,  
24 Judge. Because you're right. I agree. The reasons  
25 I am still interested in taking corporate folks'

1 depositions who have not been produced -- they've  
2 produced who they selected for 30(b)(6), but they've  
3 got some higher-ups, I mentioned more than a year  
4 ago, such as Susan Cameron Ivy --

5 THE COURT: So let me get this Lopez down,  
6 and we'll go to something else.

7 How do I write it in the order? That the  
8 deposition of Lopez will take place by November 15,  
9 or he'll be not in the case?

10 MR. MONDE: Or he'll be dismissed.

11 THE COURT: All right. So you can live  
12 with that, Mr. Schlesinger?

13 MR. SCHLESINGER: Yes.

14 THE COURT: All right. So I'm going to  
15 write that --

16 MR. SCHULTZ: Can I mention, Your Honor,  
17 just on a procedural point? This is Matt Schultz.

18 THE COURT: Sure.

19 MR. SCHULTZ: And I spoke with David about  
20 this. And my understanding was -- not that -- I  
21 don't know that it matters, frankly -- but not that  
22 we would dismiss him, but if Lopez was out of the  
23 case when we amended our complaint to include  
24 Pontusson, we would simply eliminate Lopez from that  
25 complaint. And that would resolve the issue, as

1       opposed to a deadline for dismissal.

2               MR. MONDE:   And, Judge, that alternative is  
3       fine as well.

4               THE COURT:   Tell me then how to write it.  
5       I've got "Deposition of Lopez will take place by  
6       November 15."

7               MR. MONDE:   "November 15, or the complaint  
8       will be amended to drop Mr. Lopez as a named  
9       plaintiff."

10              THE COURT:   All right.   Is that okay with  
11      you, Mr. Schlesinger?

12              MR. SCHLESINGER:   Yes, sir.

13              THE COURT:   All right.   Give me a second to  
14      write that down.   All right.   So that takes care of  
15      Lopez.

16              Who is the other person?

17              MR. MONDE:   Mr. Pontusson.   It's spelled  
18      P-O-N-T-U-S-S-O-N.   The status of Mr. Pontusson is  
19      that an individual action in a district court in  
20      North Carolina was filed.   The MDL panel has issued  
21      and entered a conditional transfer order.   That was  
22      back on August 15.   There has been some sort of a  
23      communication snafu between the district court in  
24      North Carolina and the district court here, because  
25      that CTO simply needs to be entered.   But I checked



1 the docket this morning, and it still isn't.

2 THE COURT: Do you think it's at their end  
3 or do you think it is our end?

4 MR. MONDE: I don't know, Judge.

5 THE COURT: What do you suggest I do to  
6 make that happen? Is there something in the clerk's  
7 office I can do?

8 MR. MONDE: It's ordinarily something that  
9 the plaintiffs take care of. I mean, it's a phone  
10 call. Because it may not just be with your clerk  
11 here. So I would urge, as I have in the past, the  
12 plaintiffs to just track down the status of that  
13 conditional transfer order and get it entered.

14 Once that happens, I would suggest that by  
15 that same November 15 date, the Court order that the  
16 complaint, at the same time it's going to be amended  
17 with regard to Mr. Lopez, if they drop him, that it  
18 be amended to add Mr. Pontusson. And then I would  
19 suggest that the Court direct the parties to confer  
20 and submit a joint order that addresses the other  
21 procedural issues that I raised. That obviates the  
22 need for further motion to dismiss briefing. That  
23 obviates the need for the Court to revisit any of its  
24 rulings. And that preserves the rights of all  
25 parties with regard to the Court's prior rulings on

1 that.

2 THE COURT: All right. Tell me how -- and  
3 I'll clear this with the plaintiffs before I write it  
4 in -- but tell me what you would want the order to  
5 say on Mr. Pontusson.

6 MR. MONDE: That "by November 15,  
7 plaintiffs will amend the complaint to add Mr.  
8 Pontusson as a named plaintiff."

9 THE COURT: And if I do that, does that  
10 take care of the rest of it?

11 MR. MONDE: As far as I'm concerned. I  
12 mean, Matt -- I suspect that Mr. Schultz is the  
13 person I'd be dealing with primarily on this. And if  
14 Matt agrees, he and I will go off and work on a  
15 proposed order that takes care of these procedural  
16 issues. I fully anticipate we'll be submitting a  
17 joint order. If there is an issue, we'll telephone  
18 the Court's clerk and advise of the issue, so we can  
19 get it resolved.

20 THE COURT: Could you live with that  
21 language, Mr. Schultz, Matt Schultz?

22 MR. SCHULTZ: Yes, Your Honor.

23 THE COURT: All right. Does this work for  
24 you, Mr. Schlesinger?

25 MR. SCHLESINGER: It does, Judge. We

1 contemplated his consent -- Mr. Pontusson's situation  
2 is very different, insofar as he's been deposed, so  
3 there is no absence of data for the defendant. They  
4 know what he has to say. He's been deposed. So we  
5 can get this all done with a consent order, I think.

6 THE COURT: All right. So what it now  
7 says, Mr. Monde, is "Status conference set for 8:30  
8 a.m. on Friday March 22, 2019. Deposition of Lopez  
9 will take place by November 15, or the complaint will  
10 be amended to drop Mr. Lopez as a named plaintiff.  
11 By November 15, the plaintiffs will amend the  
12 complaint to add Mr. Pontusson as a named plaintiff."

13 Does that take care of your concerns?

14 MR. MONDE: Yes.

15 THE COURT: All right. And what else? Is  
16 there anything else that needs to be added to the  
17 order, Mr. Schlesinger?

18 MR. SCHLESINGER: Not for the plaintiffs.

19 THE COURT: All right. So I'm going to  
20 initial this down at the bottom. And today is the  
21 26th. So I am entering three dates, plus those  
22 handwritten comments. I'll hand that to Mr. Gonzales  
23 and he can get that filed.

24 Did you have other things that you needed  
25 to raise? You were talking about corporate

1 executives, and I saw Mr. Biersteker shaking his  
2 head, so --

3 MR. SCHLESINGER: I made him shift.

4 British American Tobacco finalized its  
5 complete takeover of Reynolds. And I do believe that  
6 there is going to be -- and there has been quite a  
7 change in the management. And I do believe there is  
8 going to be somebody we're going to want from British  
9 American Tobacco back -- which is an English  
10 company -- now that they're no longer on the American  
11 Stock Exchange. I mean, it's just a different  
12 company. I do believe, because they still wholly own  
13 and run American Spirit and govern it through  
14 Reynolds and everything, that there is going to be  
15 someone --

16 THE COURT: So you're looking for one  
17 probably 30(b)(6) of the British company to nail down  
18 that you got the right parties here?

19 MR. SCHLESINGER: And more than that, just  
20 how they're ongoing with their wholly owned  
21 subsidiaries. And then, of course, one of the gals  
22 that was very prominent and important in American  
23 Spirit and the takeover of the Lorillard brand,  
24 Newport cigarettes, was Susan Cameron Ivy. I  
25 mentioned her more than once to Your Honor as someone

1 who is a higher-up. She's now retired in mid '17.  
2 But I do believe they will control her. Other people  
3 that are corporate higher-ups, but they haven't  
4 designated, but folks that know a lot about the  
5 product, the business, folks that we would like to  
6 depose.

7 And, as Your Honor may recall, I fussed  
8 about the nature of this protective order that  
9 blankets the discovery that's been given so far, and  
10 I didn't believe there should be protection on it.  
11 And that's something that we also will at some point  
12 bring before Your Honor to consider.

13 So because it's a status conference, and I  
14 guess it's an opportunity to let Your Honor know  
15 about things that are on our mind, things that are of  
16 interest, these are things that are important to us,  
17 of interest. And while they may not be ripe for  
18 ruling today, I don't want to be heard in March from  
19 the defendants, of them saying: Why didn't they  
20 mention this in -- back around the time of Halloween?  
21 So I'm mentioning it, because they are matters of  
22 interest to me in prosecuting the case.

23 THE COURT: Any thoughts on those thoughts?

24 MR. MONDE: More than a few, Judge.

25 First of all, British American Tobacco is

1 not a defendant or a party. It is not subject to the  
2 jurisdiction of this Court. And that acquisition was  
3 completed over a year ago.

4 So Mr. Schlesinger on the one hand says,  
5 Oh, public health emergency -- or urgency, we need to  
6 move this case along. And now he is proposing to  
7 take a deposition of a nonparty, not subject to the  
8 jurisdiction of this Court, a year -- more than a  
9 year later? No.

10 If the Court would please refer back to  
11 both the Exhibit A and the Exhibit B orders proposed  
12 by plaintiff, they both call for the close of all  
13 fact discovery by October 31. That's five days from  
14 now. There was gracious, ample time for Mr.  
15 Schlesinger, if he felt there were other fact witness  
16 depositions to be taken, to take them. He has not.

17 Ms. Ivy -- Mr. Schlesinger raised Ms. Ivy  
18 back on the first initial status conference in May of  
19 2016. They've deposed other senior executives, but  
20 never has Ms. Ivy been requested by the plaintiffs.  
21 It's simply too late.

22 And furthermore, under the current  
23 scheduling order fact discovery closed July 2. At  
24 that time we had the issue of the supplemental  
25 production that was going on. And we had agreed to

1 make a 30(b)(6) witness available on that, and to let  
2 that deposition go forward. And if there were  
3 additional depositions necessary, flowing out of that  
4 deposition about predictive coding, we opened to the  
5 possibility of that.

6 Fact discovery either closed, or is due to  
7 close by October 31, even under both plaintiffs'  
8 proposals. And it's simply too late in the day for  
9 Mr. Schlesinger to be thinking about deposing people  
10 that he knew about and could have deposed at any time  
11 on a timely basis before this.

12 But most especially as to the deposition of  
13 BAT, that is inappropriate on so many levels. And it  
14 is inconsistent with Mr. Schlesinger's stated desire  
15 to move this case long into the expert discovery  
16 phase. And so we oppose any further fact  
17 depositions, except for the completion of Mr. Lopez,  
18 if he's going to be made available. Under their  
19 proposal, fact discovery closes in four days, five  
20 days, and that's what it ought to be.

21 MR. SCHLESINGER: And I would ask, Your  
22 Honor, if you're of a mind -- I respect what  
23 Mr. Monde says -- but I was in trial in tobacco cases  
24 back-to-back-to-back all through May, June, and July.  
25 And the corporate reps that they sent to me to

1     testify in the phase 2 punitive damages phases in  
2     cases against Reynolds, these guys had British  
3     accents, and they were new. And they didn't have  
4     British accents before. The corporate reps have  
5     changed. The corporate reps are coming from England  
6     now. They're Brits that have been infiltrating into  
7     this corporate structure. And that's part of the  
8     reason why I said expert disclosures, and what have  
9     you, notwithstanding, there is always the benefit to  
10    getting to the truth of things, and really  
11    understanding where you are in discovery. And our  
12    experts are going to be fine, even if we do take some  
13    corporate people. And some of the corporate people  
14    are going to be jurisdictional, because there are  
15    multiple layers of companies between Lorillard,  
16    Reynolds American -- now British American Tobacco --  
17    for jurisdictional purposes, it would be nice to get  
18    somebody up high to give us what everything is -- how  
19    everything is structured down low.

20                 And it isn't as if we haven't had  
21    experience with Reynolds saying: You've got the  
22    wrong defendant, and RAI is the defendant, not RJR  
23    Tobacco Company. And now that the Brits own them,  
24    and have changed things around -- and I'm seeing it  
25    real-time in cases where American Spirit is part of



1 the evidence in the case -- it just does occur to me  
2 that it's pertinent.

3 I've not been in front of Your Honor on  
4 this for quite some time. These are things that are  
5 coming to my state of knowledge.

6 THE COURT: Well, let's do this: Let's  
7 stick with the October 31st date. Everybody has been  
8 working toward this date to wrap up the factual  
9 discovery. If you get into this case, and all of a  
10 sudden they're telling you you've got the wrong  
11 defendant, I'm probably going to be pretty liberal to  
12 letting you depose somebody.

13 I guess, as much as I understand this case,  
14 I think you've got the right defendants. There may  
15 be somebody now that is a holding company there, but  
16 I think you've got the right defendants. You've  
17 still got all these people, their 30(b)(6); you've  
18 got their representations. I think you're pretty  
19 nailed down for class certification. I'm not seeing  
20 much of a problem. And I think we might be  
21 unraveling a lot of progress if we start getting  
22 third party depositions of the British folks.

23 So monitor it. Let's stick with what we've  
24 got. We got agreement on this. And if they start  
25 telling you you've got the wrong people, I'll be

1 pretty liberal about trying to sort that out. I  
2 think we're okay right at the moment unless you've  
3 got something more tangible. But let's stick with  
4 what we've got, move forward. And if there is a  
5 problem, I'll probably be pretty liberal to try to  
6 figure out what the problem is.

7 MR. SCHLESINGER: I can do that as well.  
8 But I can also, just to give Your Honor an  
9 anticipated potential, is that rebuttal experts are  
10 one thing. I can envision their experts saying  
11 things that may make me come back here and say: I  
12 want rebuttal discovery. And they may bring  
13 something up that maybe somebody at the levels that  
14 they've produced doesn't know, that someone above  
15 them does know. So I can envision that. I have to  
16 wait and see how it shakes out with their experts.  
17 But just to give Your Honor heads-up perhaps in the  
18 expert discovery there may be actual fact discovery  
19 or executive discovery that I feel is justified  
20 because of how the experts shake out. So I'll give  
21 Your Honor heads-up.

22 THE COURT: All right. Let's see how it  
23 develops.

24 Does that work for you, Mr. Monde?

25 MR. MONDE: It does, Judge.

1 THE COURT: All right. What else can I do  
2 for you today? What else do we need to discuss, Mr.  
3 Schlesinger?

4 MR. SCHLESINGER: Sadie's still serves good  
5 blue corn enchiladas, Judge. I used to eat at  
6 Sadie's when it was in the bowling alley. That's how  
7 long I've been coming out from here for business. I  
8 finally got out there last night.

9 THE COURT: It was a good way to keep the  
10 kids entertained. Which one do you go, the one on  
11 4th Street or -- they've got different locations now.

12 MR. SCHLESINGER: I went to the one on 4th  
13 Street. I went there when they first opened it,  
14 because the first time I went there Bill Snead took  
15 me to the bowling alley. And that was the first time  
16 I'd ever had a sopapilla. I'd never even heard of  
17 that before. We went to see some team roping, and  
18 then we went out to Sadie's. Back then, I couldn't  
19 eat anything on the plate, it was so hot. I've  
20 gotten used to it.

21 Other than that, plaintiff is good, Judge.

22 THE COURT: All right. Mr. Schultz, do you  
23 have anything else? I know you're doing a lot of the  
24 frontline work. Anything we need to discuss?  
25 Anything else I can help you with?

1 MR. SCHULTZ: No. Thank you, Your Honor.

2 THE COURT: How about you, Mr. Monde?

3 MR. MONDE: Only a regret that Mr.  
4 Schlesinger didn't invite me to dinner at Sadie's.  
5 But other than that --

6 THE COURT: Have you been to Sadie's?

7 MR. MONDE: I have not. I did go to The  
8 Cellar on Lomas, and it was excellent, last night.

9 THE COURT: We'll get you to say "Lomas"  
10 here. We'll get you trained here, you know?

11 MR. MONDE: Y'all come to Georgia sometime  
12 and we can talk about that.

13 THE COURT: I was in Atlanta on Sunday. I  
14 was judging a moot court over at Emery.

15 MR. MONDE: Excellent.

16 THE COURT: So I flew in from Denver on  
17 Friday night. And then they had a dinner for us on  
18 Saturday night at the Empire State downtown? Empire?

19 MR. MONDE: You know, I guess I lead a  
20 boring life. I'm not really up to speed on the most  
21 recent restaurants in Atlanta.

22 THE COURT: I had to fly out on Sunday.  
23 Weather was good. The last time I was in Atlanta it  
24 was a snowstorm so I was appreciative for the good  
25 weather.

1 All right. Well, I certainly hate to drag  
2 everybody from all parts of country for these things.  
3 So if y'all ever want to do them by phone, don't  
4 worry about it. You're not going to -- it's not  
5 going to make any difference. I know I always wanted  
6 to be where the judge was, so I know that feeling.  
7 But I've learned to tell people no whether they're in  
8 public, present, or on the phone. So it doesn't  
9 matter.

10 All right. Well, y'all have a good  
11 weekend, have safe trips back. We'll see y'all on  
12 the 22nd in some form or fashion. Call us if you  
13 need anything.

14 (The Court was adjourned.)  
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## C-E-R-T-I-F-I-C-A-T-E

UNITED STATES OF AMERICA

DISTRICT OF NEW MEXICO

I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,  
Official Court Reporter for the State of New Mexico,  
do hereby certify that the foregoing pages constitute  
a true transcript of proceedings had before the said  
Court, held in the District of New Mexico, in the  
matter therein stated.

In testimony whereof, I have hereunto set my  
hand on November 2, 2018.

  
\_\_\_\_\_  
Jennifer Bean, FAPR, RMR-RDR-CCR  
Certified Realtime Reporter  
United States Court Reporter  
NM CCR #94  
333 Lomas, Northwest  
Albuquerque, New Mexico 87102  
Phone: (505) 348-2283  
Fax: (505) 843-9492

SANTA FE OFFICE  
119 East Marcy, Suite 110  
Santa Fe, NM 87501  
(505) 989-4949  
FAX (505) 843-9492

**BEAN**  
**& ASSOCIATES, Inc.**  
PROFESSIONAL COURT  
REPORTING SERVICE

MAIN OFFICE  
201 Third NW, Suite 1630  
Albuquerque, NM 87102  
(505) 843-9494  
FAX (505) 843-9492  
1-800-669-9492  
e-mail: info@litsupport.com